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HOUSE BILL 1671
Committee Substitute Favorable 5/15/07
Committee Substitute #2 Favorable 5/17/07
Senate Judiciary I (Civil) Committee Substitute Adopted 7/17/07

Short Title: Arbitration/Negligent Health Care Claims.

(Public)

Sponsors:

Referred to:

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE ARBITRATION OF CLAIMS FOR PERSONAL INJURY OR WRONGFUL DEATH BASED ON ALLEGED NEGLIGENCE IN THE PROVISION OF HEALTH CARE, UPON THE AGREEMENT OF ALL PARTIES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"Article 1H.

"Voluntary Arbitration of Negligent Health Care Claims.

"§ 90-21.60. Voluntary arbitration; prior agreements to arbitration void.

(a) Application of Article. – This Article applies to all claims for damages for personal injury or wrongful death based on alleged negligence in the provision of health care by a health care provider as defined in G.S. 90-21.11 where all parties have agreed to submit the dispute to arbitration under this Article in accordance with the requirements of G.S. 90-21.61.

(b) When Agreement Is Void. – Except as provided in G.S. 90-21.61(a), any contract provision or other agreement entered into prior to the commencement of an action that purports to require a party to elect arbitration under this Article is void and unenforceable. This Article does not impair the enforceability of any arbitration provision that does not specifically require arbitration under this Article.

"§ 90-21.61. Requirements for submitting to arbitration.

(a) Before Action Is Filed. – Before an action is filed, a person who claims damages for personal injury or wrongful death based on alleged negligence in the provision of health care by a health care provider as defined in G.S. 90-21.11 and the allegedly negligent health care provider may jointly submit their dispute to arbitration under this Article by, acting through their attorneys, filing a stipulation to arbitrate with

1 the clerk of superior court in the county where the negligence allegedly occurred. The
2 filing of such a stipulation provides jurisdiction to the superior court to enforce the
3 provisions of this Article and tolls the statute of limitations.

4 (b) Once Action Is Filed. – The parties to an action for damages for personal
5 injury or wrongful death based on alleged negligence in the provision of health care by
6 a health care provider as defined in G.S. 90-21.11 may elect at any time during the
7 pendency of the action to file a stipulation with the court in which all parties to the
8 action agree to submit the dispute to arbitration under this Article.

9 (c) Declaration Not to Arbitrate. – In the event that the parties do not
10 unanimously agree to submit a dispute to arbitration under subsection (b) of this section,
11 the parties shall file a declaration with the court prior to the discovery scheduling
12 conference required by G.S. 1A-1, Rule 26(f1).

13 The declaration shall state that the attorney representing the party has presented the
14 party with a copy of the provisions of this Article, that the attorneys representing the
15 parties have discussed the provisions of this Article with the parties and with each other,
16 and that the parties do not unanimously agree to submit the dispute to arbitration under
17 this Article. The declaration is without prejudice to the parties' subsequent agreement to
18 submit the dispute to arbitration.

19 **"§ 90-21.62. Selection of arbitrator.**

20 (a) Selection by Agreement. – An arbitrator shall be selected by agreement of all
21 the parties no later than 45 days after the date of the filing of the stipulation where the
22 parties agreed to submit the dispute to arbitration under this Article. The parties may
23 agree to select more than one arbitrator to conduct the arbitration. The parties may agree
24 in writing to the selection of a particular arbitrator or particular arbitrators as a
25 precondition for a stipulation to arbitrate.

26 (b) Selection From List. – If all the parties are unable to agree to an arbitrator by
27 the time specified in subsection (a) of this section, the arbitrator shall be selected from
28 emergency superior court judges who agree to be on a list maintained by the
29 Administrative Office of the Courts. Each party shall alternately strike one name on the
30 list, and the last remaining name on the list shall be the arbitrator. The emergency
31 superior court judge serving as an arbitrator would be compensated at the same rate as
32 an emergency judge serving in superior court.

33 **"§ 90-21.63. Witnesses; discovery; depositions; subpoenas.**

34 (a) General Conduct of Arbitration; Experts. – The arbitrator may conduct the
35 arbitration in such manner as the arbitrator considers appropriate so as to aid in the fair
36 and expeditious disposition of the proceeding subject to the requirements of this section
37 and G.S. 90-21.64. Except as provided in subsection (b) of this section, each side shall
38 be entitled to two experts on the issue of liability, two experts on the issue of damages,
39 and one rebuttal expert.

40 (b) Experts in Case of Multiple Parties. – Where there are multiple parties on
41 one side, the arbitrator shall determine the number of experts that are allowed based on
42 the minimum number of experts necessary to ensure a fair and economic resolution of
43 the action.

1 (c) Discovery. – Notwithstanding G.S. 90-21.64(a)(1), unless the arbitrator
2 determines that exceptional circumstances require additional discovery, each party shall
3 be entitled to all of the following discovery from any other party:

4 (1) Twenty-five interrogatories, including subparts.

5 (2) Ten requests for admission.

6 (3) Whatever is allowed under applicable court rules for:

7 a. Requests for production of documents and things and for entry
8 upon land for inspection and other purposes; and

9 b. Requests for physical and mental examinations of persons.

10 (d) Depositions. – Each party shall be entitled to all of the following depositions:

11 (1) Depositions of any party and any expert that a party expects to call as a
12 witness. – Except by order of the arbitrator for good cause shown, the
13 length of the deposition of a party or an expert witness under this
14 subdivision shall be limited to four hours.

15 (2) Depositions of other witnesses. – Unless the arbitrator determines that
16 exceptional circumstances require additional depositions, the total
17 number of depositions of persons under this subdivision shall be
18 limited to five depositions per side, each of which shall last no longer
19 than two hours and for which each side shall be entitled to examine for
20 one hour.

21 (e) Subpoenas. – An arbitrator may issue a subpoena for the attendance of a
22 witness and for the production of records and other evidence at any hearing and may
23 administer oaths. A subpoena shall be served in the manner for service of subpoenas in
24 a civil action and, upon the motion to the court by a party to the arbitration proceeding
25 or by the arbitrator, enforced in the manner for enforcement of subpoenas in a civil
26 action.

27 **"§ 90-21.64. Time limitations for arbitration.**

28 (a) Time Frames. – The time frames provided in this section shall run from the
29 date of the filing of the stipulation where the parties agreed to submit the dispute to
30 arbitration under the Article. Any arbitration under this Article shall be conducted
31 according to the time frames as follows:

32 (1) Within 45 days, the claimant shall provide a copy to the defendants of
33 all relevant medical records. Alternatively, the claimant may provide
34 to the defendants a release, in compliance with the federal Health
35 Insurance Portability and Accountability Act, for all relevant medical
36 records, along with the names and addresses of all health care
37 providers who may have possession, custody, or control of the relevant
38 medical records. The provisions of this subdivision shall not limit
39 discovery conducted pursuant to G.S. 90-21.63(c).

40 (2) Within 120 days, the claimant shall disclose to each defendant the
41 name and curriculum vitae or other documentation of qualifications of
42 any expert the claimant expects to call as a witness.

1 (3) Within 140 days, each defendant shall disclose to the claimant the
2 name and curriculum vitae or other documentation of qualifications of
3 any expert the defendant expects to call as a witness.

4 (4) Within 160 days, each party shall disclose to each other party the name
5 and curriculum vitae or other documentation of qualifications of any
6 rebuttal expert the party expects to call as a witness.

7 (5) Within 240 days, all discovery shall be completed.

8 (6) Within 270 days, the arbitration hearing shall commence.

9 (b) Scheduling Order. – The arbitrator shall issue a case scheduling order in
10 every proceeding specifying the dates by which the requirements of subdivisions (2)
11 through (6) of subsection (a) of this section shall be completed. The scheduling order
12 also shall specify a deadline for the service of dispositive motions and briefs.

13 (c) Public Policy as to When Hearings Begin. – It is the express public policy of
14 the General Assembly that arbitration hearings under this Article be commenced no
15 later than 10 months after the parties file the stipulation where the parties agreed to
16 submit the dispute to arbitration under this Article. The arbitrator may grant a
17 continuance of the commencement of the arbitration hearing only where a party shows
18 that exceptional circumstances create an undue and unavoidable hardship on the party or
19 where all parties consent to the continuance.

20 **"§ 90-21.65. Written decision by arbitration.**

21 (a) Issuing the Decision. – The arbitrator shall issue a decision in writing and
22 signed by the arbitrator within 14 days after the completion of the arbitration hearing
23 and shall promptly deliver a copy of the decision to each party or the party's attorneys.

24 (b) Limit on Damages. – The arbitrator shall not make an award of damages that
25 exceeds a total of one million dollars (\$1,000,000) for any dispute submitted to
26 arbitration under this Article, regardless of the number of claimants or defendants that
27 are parties to the dispute.

28 (c) Finding if Damages Awarded. – If the arbitrator makes an award of damages
29 to the claimant, the arbitrator shall make a finding as to whether the injury or death was
30 caused by the negligence of the defendant.

31 (d) Paying the Arbitrator. – The fees and expenses of the arbitrator shall be paid
32 equally by the parties.

33 (e) Attorneys' Fees and Costs. – Each party shall bear its own attorneys' fees and
34 costs.

35 **"§ 90-21.66. Judgment by court.**

36 After a party to the arbitration proceeding receives notice of a decision, the party
37 may file a motion with the court for a judgment in accordance with the decision at
38 which time the court shall issue such a judgment unless the decision is modified,
39 corrected, or vacated as provided in G.S. 90-21.68.

40 **"§ 90-21.67. Retention of jurisdiction by court.**

41 The court shall retain jurisdiction over the action during the pendency of the
42 arbitration proceeding. The court may, at the request of the arbitrator, enter orders
43 necessary to enforce the provisions of this Article.

44 **"§ 90-21.68. Appeal of arbitrator's decision.**

1 There is no right to a trial de novo on an appeal of the arbitrator's decision under this
2 Article. An appeal of the arbitrator's decision is limited to the bases for appeal provided
3 under G.S. 1-569.23 or G.S. 1-569.24.

4 **"§ 90-21.69. Revised Uniform Arbitration Act not applicable.**

5 The provisions of Article 45C of Chapter 1 of the General Statutes do not apply to
6 arbitrations conducted under this Article except to the extent specifically provided in
7 this Article."

8 **SECTION 2.** G.S. 1-569.3 is amended by adding a new subsection to read:

9 "(c) This Article does not govern arbitrations under Article 1H of Chapter 90 of
10 the General Statutes."

11 **SECTION 3.** This act becomes effective January 1, 2008, and applies to
12 agreements to arbitrate entered into on or after that date.